

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EUGENE TERRANCE, as Personal Representative
for the Estate of EVERETT L. TERRANCE, Deceased

Plaintiff,

v.

Case No: 99-CV-74433-DT
HON: Lawrence P. Zatkoff

NORTHVILLE REGIONAL PSYCHIATRIC HOSPITAL,
MICHIGAN DEPARTMENT OF MENTAL HEALTH,
H. BLANDA, M.D., ARDESHIR EMANI SAID, M.D.,
O.R. LEE, M.D., DR. SADASIVAN, M.D, SHIRLEY OWENS, R.N.,
B. FANNING, O.T., DR. NAIR, DR. KIM, DR. PAN, and
DR. ALMASI, Jointly and Severally,

Defendants.

GEOFFREY NELS FIEGER (P30441)
TODD J. WEGLARZ (P48035)
LLOYD G. JOHNSON (P43046)
Attorneys for Plaintiff
FIEGER, FIEGER, KENNEY & JOHNSON, P.C.
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MARGARET A. NELSON (P30342)
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Assistant Attorney General
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U.S. DIST. COURT
EAST DIST. MICH.
DETROIT
2003 FEB 19 4:36
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PLAINTIFF'S MOTION TO DISQUALIFY PRESIDING DISTRICT COURT JUDGE

NOW COMES the Plaintiff, EUGENE TERRANCE, as Personal Representative for the Estate of EVERETT L. TERRANCE, Deceased, by and through his attorneys, FIEGER, FIEGER, KENNEY & JOHNSON, P.C. and for Plaintiff's Motion to Disqualify Presiding District Court Judge, states as follows:

1. The above matter is a federal civil rights claim filed against the Defendants arising out of Plaintiff's Decedent's heat stroke induced death while confined at the Northville Regional Psychiatric Hospital.

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2. That Plaintiff has retained the law offices of Fieger, Fieger, Kenney & Johnson, P.C., to represent her in pursuing the above matter.

3. That within the past week, Plaintiff's counsel's office has employed Lloyd G. Johnson as an associate attorney.

4. That Mr. Lloyd Johnson is involved in a litigation commenced by Chief Judge Zatkoff, in his individual capacity, against the Ingleside Grossedale Park Association in the Macomb County Circuit Court, Case No. 99-1352 CZ.

5. That Mr. Lloyd Johnson is Ingleside Grossedale Park Association's attorney in this ongoing litigation, and Mr. Johnson remains in this role notwithstanding having switched employment to Plaintiff's law firm.

6. That because Plaintiff's presiding District Court Judge is involved in an individual litigation against a party being represented by one of the associate attorneys of Plaintiff's counsel's law firm, Plaintiff submits presiding District Court Judge, Chief Judge Zatkoff, should be disqualified pursuant to 28 USC § 455(a) and Judicial Cannon 2A.

7. That this issue has previously come before the Court on another matter where the Plaintiff was being represented by Mr. Lloyd Johnson's law firm, and the court entered an order disqualifying Judge Zatkoff and reassigned the case. (See Exhibit A).

Wherefore, Plaintiff respectfully requests this Honorable Court to enter an order disqualifying Chief Judge Zatkoff from presiding over this matter, and to assign a new Judge.

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Respectfully submitted,

FIEGER, FIEGER, KENNEY & JOHNSON, P.C.



GEOFFREY N. FIEGER (P30441)

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Attorneys for Plaintiffs

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Dated: February 18, 2003

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FILED

**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO DISQUALIFY
PRESIDING DISTRICT COURT JUDGE**

Lloyd G. Johnson is now an associate attorney of the undersigned law offices representing Plaintiff in this matter. Mr. Johnson will continue representing Defendant Ingleside Grossedale Park Association in the ongoing litigation filed by Chief Judge Zatkoff, pending in the Macomb County Circuit Court, Case No. 99-1352 CZ.

Because the appearance of an attorney is deemed to be the appearance of every member of the law firm, Plaintiff submits the presiding District Court Judge in this matter, Chief Judge

Zatkoff, should disqualify himself pursuant to 28 USC § 455(a) and Judicial Cannon 2A. (See MCR 2.117).

Section 455(a) states:

Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonable be questioned.

Judicial Cannon 2A states "a judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary". The commentary to Judicial Cannon 2A reads:

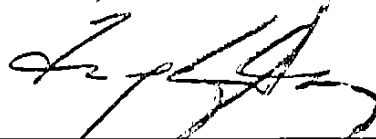
Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety The test for the appearance of impropriety is whether the conduct would create, in the reasonable minds, with knowledge of all relevant circumstances that are reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired. (Emphasis added).

As this Court did on another matter on March 11, 2002, for the same reasons addressed herein, Plaintiff respectfully requests this Honorable Court to disqualify itself from presiding over this matter for the reasons discussed above.

Respectfully submitted,

FIEGER, FIEGER, KENNEY & JOHNSON, P.C.

By:



GEOFFREY N. FIEGER (P30441)
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Dated: February 18, 2003

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PROOF OF SERVICE

On 2-19-03, I served via Facsimile and First Class Mail a copy of the foregoing upon all counsel of record at their respective addresses, and declare under penalty of perjury that this statement is true to the best of my knowledge, information and belief.

Shelli L. Ware

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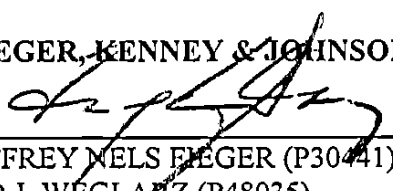
FILED

NOTICE OF HEARING

PLEASE TAKE NOTICE that Plaintiff's Motion to Disqualify Presiding District Court Judge will be brought on for hearing before the Honorable Lawrence Zatkoff of the USDC, Eastern District, Southern Division, at a date and time to be determined by the Court.

Respectfully submitted,

FIEGER, FIEGER, KENNEY & JOHNSON, P.C.


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Date: February 19, 2003

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

**SEE CASE FILE FOR
ADDITIONAL
DOCUMENTS OR PAGES
THAT WERE NOT
SCANNED**